SheIN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10941 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KISHOR MOHANBHAI BAWARIYA
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR HR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
Mr. N.D. Gohil, Asst. GOVERNMENT PLEADER for Respondent(s) : 3,
MR M. IQBAL A SHAIKH for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 14/07/2006

ORAL JUDGMENT

By filing this petition, the petitioner, who is a detenu under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 [for short, the PBM Act hereinafter] has challenged his detention order dated 6th April 2006 passed by District Magistrate, Rajkot.

In the grounds of detention, it is stated that the petitioner is the owner of Gaurav Industries at Jamvali GIDC Plot No.152, which is manufacturing “Shradha” and “Kesar” brand Groundnut Oil. It is further stated that on 04.02.06 two shops, viz: Balmukund Traders and Ishwar Trading Company situated at the Marketing Yard, Rajkot were inspected and few tins of groundnut oil manufactured by the petitioner were seized. It is further stated that on examination of the samples drawn from the aforesaid ground nut oil by Public Health Laboratory of Rajkot Municipal Corporation, it was found that the groundnut oil was adulterated and not of the prescribed standard. It is alleged that the groundnut oil manufactured by the petitioner was adulterated and was of an inferior quality and the same was sold at a higher price. Accordingly it was found that the petitioner has indulged into profiteering. Under the circumstances, the petitioner was preventively detained under the provisions of the PBM Act.

Learned advocate for the petitioner, Mr. H.R. Prajapati submitted that the allegations made against the petitioner in

the detention order is that the petitioner has adulterated/mis-branded the groundnut oil and the quality of the groundnut oil was not in accordance with the standard prescribed under the Food Adulteration Act. He further submitted that the sample was also sent to the Public Health Laboratory of Rajkot Municipal Corporation under the provisions of the Food Adulteration Act. He further submitted that if the article is adulterated/mis-branded as per the allegations in the detention order, it is not a ground for passing an order under the PBM Act by way of preventive detention. He submitted that manufacturing, storing, selling etc. of adulterated articles is outside the purview of the PBM Act. He, therefore, submitted that resorting to the provisions of the PBM Act is unjustified.

In support of his contention, learned advocate Mr. Prajapati relied on the judgment of a Division Bench of this Court in the case of KISHOR AMRATLAL vs. RAJIV TAKRU reported in 1982 (2) GLR 1031 whereby the Division Bench held that if an article is misbranded it will not attract provisions of the BPM Act and breach of the provisions of the Food Adulteration Act will not be a ground for resorting to the provisions of the detention Act.

Mr. Prajapati, learned advocate for the petitioner further submitted that there is a delay in deciding the representation. It is submitted that the petitioner made representation through his advocate on 22nd April 2006 which is received by the Central Government on 25th April 2006 and the same was decided on 12th May 2006. He, therefore, submitted that there is a delay on the part of the Central Government in deciding the said representation, and, therefore also the detention order

is required to be quashed.

Mr. Gohil, learned Assistant Government Pleader submitted that in order to fetch more price, the petitioner has misbranded the articles, which is a case of profiteering, and, therefore, it will attract the provisions of the PBM Act.

As regards the contention of delay in deciding the representation, on behalf of the Union of India, one A.K. Ganguly, Under Secretary in the Department of Consumer Affairs, Foods & Public Distribution, New Delhi has filed an affidavit. In paragraph 5, the delay is sought to be explained as under:-

> "5. As regards contention made in sub-para (h) of para 4 of the petition, it is submitted that the representation dated 22.4.2006 made by the advocate of the detenu was received in the Central Government on 25.4.2005. After examining the representation, competent authority desired that the Parawise comments on the representation be called for from the State Government and accordingly these were called for vide letter dated 28.4.2006. The State Government was reminded on 2.5.2006. The parawise comments on the representation from the State Government was received in the Central Government on 5.5.2006 vide this letter dated 2.5.2006. After considering the representation along with reports and grounds of detention, parawise comments and other relevant records of the case, the same was rejected by the Competent Authority in the Central Government on 12.5.2006. The decision of the Central Government was conveyed to Superintendent, Vadodara Central Jail on the same day i.e. 12.5.2006 by telegram with a direction to convey the same to the detenu. State Government was also informed

> simultaneously on the same day. Thus, the representation of the detenu was considered by the Central Government as expeditiously as possible."

It is required to be noted that there is no explanation for delay between 05.05.06 and 12.05.06. There is no explanation for the aforesaid intervening period and the said period has, therefore, remained unexplained. Mr. Shaikh appearing for the Central Government is not able to point out the explanation in any manner whatsoever in connection with the delay of aforesaid one week.

In support of his contention that the detention order is required to be quashed in view of the delay on the part of the Central Government in deciding the said representation, Mr. Prajapati, learned advocate for the petitioner, has relied upon the decision of the Supreme Court in Rajammal Vs. State of Tamil Nadu and Another, reported in AIR 1999 SC 684, wherein it is held as under in paragraphs 9 and 10 :

> "9. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.
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> 10. What happened in this case was that the Government which received remarks from different authority submitted the relevant files before the Under Secretary for processing it on the next day. The Under Secretary forwarded it to the Deputy Secretary on the next working day. Thus there is some explanation for the

> delay till 9-2-1998. Thereafter the file was submitted before the Minister who received it while he was on tour. The Minister passed the order only on 14-2-1998. Though there is explanation for the delay till 9-2-1998, we are unable to find out any explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only on 14-2-1998 is not a justifiable explanation, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen."

It is not in dispute that the Central Government received the representation of the petitioner on 05.05.06. Learned Counsel Mr. Shaikh, appearing for the Central Government has accepted the said aspect. However, ultimately, the representation of the petitioner was decided on 12.05.06. Therefore, there is a delay of about 7 days in deciding the representation of the petitioner. The delay in deciding the representation of the petitioner is not satisfactorily explained. This petition is, therefore, required to be allowed on this ground, and the order of detention is required to be quashed. In that view of the matter, it is not necessary examine the first contention raised by the learned advocate for the petitioner.

For the reasons recorded above, the order of detention passed against the detenu dated 06.04.06 is quashed and set aside. The detenu: KISHOR MOHANBHAI BAWARIYA is ordered to be released forthwith unless he is required in connection with any other offence.

Rule made absolute accordingly. No order as to costs.

[P. B. MAJMUDAR, J.]

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